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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 134

G. O. BEEMAN, GRACE W. BOWER, HARDING A. COGAN, RUSSELL L. PALMER, HELEN DUTMERS, ANTHONY BOOMGAARD, JAMES G. GUSTIN, MARGARET RONEY, *Plaintiffs and Appellants,*

vs.

MICHIGAN BOARD OF PHARMACY AND A. G. BUCHMAN, JAMES W. LYONS, ELMER T. BENSON, HARRY J. PATERSON, LEON S. LUKASZEWSKI, AS MEMBERS, *Defendants and Appellees*

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

APPELLEES' STATEMENT DISCLOSING MATTERS AND GROUNDS MAKING AGAINST JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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Plaintiffs and Appellants,

vs.

MICHIGAN BOARD OF PHARMACY AND A. G. BUCHMAN, JAMES W. LYONS, ELMER T. BENSON, HARRY J. PATERSON, LEON S. LUKASZEWSKI, AS MEMBERS,

Defendants and Appellees.

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APPELLEES' STATEMENT DISCLOSING MATTERS AND GROUNDS MAKING AGAINST JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The appellees, believing that the matters set forth below will demonstrate the lack of substance in the federal questions raised by this appeal, file this, their statement disclosing matters and grounds making against jurisdiction,

and pursuant to Court Rule 13, § 3, they respectfully move the Court to dismiss the appeal or affirm the judgment of the court below, on the following grounds:

First: The federal questions raised on behalf of appellants, are so unsubstantial as to need no further argument, and therefore warrant the Court in summarily disposing of the appeal at this stage of the proceedings, *specif.*, because

(a) in passing upon the substance of such questions, the Court will consider themselves bound by the decision in this cause, *Beeman* v. *Board of Pharmacy*, 323 Mich. 390, 35 N.W. 2d 358, as well as in connected cases cited therein [1] insofar as the state court determined "the meaning or effect of a state statute",[2] "An Act to authorize the state board of pharmacy to issue registered pharmacists' certificates in certain cases";[3]

(b) it appears upon the face of the record, that the decision of the court below, which rejected the claim that the Michigan law here in question denied appellants the equal protection of the law, guaranteed by the Fourteenth Amendment, was plainly right and

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[1] *Stebbins* v. *State Board of Pharmacy*, 297 Mich. 678, 298 N. W. 327, and *American Pharmaceutical Association* v. *State Board of Pharmacy*, 310 Mich. 23, 16 N. W. 2d 652.

[2] This Court has said: "State courts construe their statutes according to their understanding of state policy and apply them to such situations as their interpretation of the statutory language requires. In so adjudging, they are the final judicial authority upon the meaning of their state law. It is only in circumstances where their judgments collide with rights secured by the federal Constitution that we have power to protect or enforce the federal rights". *Greenough* v. *Tax Assessors*, 331 U. S. 486, 497. See, also, "The Highest Court of the State", The Florida Law Journal, Feb. 1949, p. 35.

[3] Act No. 403, § 1, Pub. Acts 1913, 2 Comp. Laws Mich. 1929, § 6860, as amended by Act No. 141, Pub. Acts 1933, Comp. Laws Mich. 1948, § 338.461, Mich. Stat. Ann. (Henderson) § 14.761.

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in accordance with well-considered judgments of this Court in similar cases;[4]

(c) the court below was also plainly correct in holding 1st, that the drug business and practicing as a pharmacist are matters subject to police regulations and may not be pursued except under statutory requirements applicable to all persons; 2nd, that one to whom a certificate of registration as a pharmacist has been issued in violation of law, could not acquire a vested right in such certificate; and therefore, 3rd, the State of Michigan did not, through enforcement of the act here in question, take any property of the appellants without due process of law, contrary to the Fourteenth Amendment.[5]

Second: Since the Michigan "Act to authorize the state board of pharmacy to issue registered pharmacists' certificates in certain cases", merely creates well defined exemptions from the requirements of "An Act to regulate the practice of pharmacy in the state of Michigan, and to prescribe penalties for the violation of the provisions of this

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[4] The classification of Michigan's "Grandfather-Pharmacy Act" is not without a reasonable basis to sustain it. The question of such reasonability, if subject to debate, is for the state legislature. The statute is not invalid because it might have gone farther to include appellants within the exemptions prescribed. *Roschen* v. *Ward*, 279 U. S. 337, 339. *Goesaert* v. *Cleary*, 335 U. S. 464, 467.

[5] *Dent* v. *West Virginia*, 129 U. S. 114; *Gray* v. *Connecticut*, 159 U. S. 74; *Hawker* v. *New York*, 170 U. S. 189; *Reetz* v. *Michigan*, 188 U. S. 505; *Graves* v. *Minnesota*, 272 U. S. 425, 427, citing with approval, *People* v. *Phippin*, 70 Mich. 6, 23, on which the court below relied; *New Orleans Pub. Service, Inc.*, v. *City of New Orleans*, 281 U. S. 682, 687. "No person can acquire a vested right to continue, when once licensed, in a business, trade, or occupation which is subject to legislative control and regulation under the police power", and the "power of State to require a license implies the power to revoke a license improperly issued", *Butcher* v. *Maybury*, 8 F. 2d 155, citing with approval *State* v. *Hovorka*, 100 Minn. 249, 252, 110 N. W. 870, 871; please see also, *Queenside Hills Realty Co.* v. *Saxl*, 328 U. S. 80; *Rosenblatt* v. *Cal. State Bd. of Pharmacy*; 69 Cal. App. 2d 69.

Act", Act No. 134 Pub. Acts 1885, as amended, Comp. Laws Mich. 1948, § 338.401, et seq., Stat. Ann. (Henderson) § 14.721 et seq., from the enjoyment of which exemptions the appellants are excluded by virtue of the former statute as construed by the court below, a decision of this Court striking down the act here challenged, would merely declare abstract and moot principles of law. Such a decree would remove from the body of Michigan law, the exemptions aforesaid, leaving the regulatory statute, Act No. 134, 1885, to stand. In short a judicial invalidation of the "Grandfather Act", on constitutional grounds, could not possibly improve appellants' position. *Kimball* v. *Kimball*, 174 U. S. 158, 161, 162; *Mills* v. *Green*, 159 U. S. 651, 653.

Courts possess no legislative power, in such a contingency, to provide a substitute, and whether a statute could be construed as separable, is for the state court to decide.[6]

We respectfully invite the Court to read the opinion of the court below in the case at bar, as well as the decisions there cited, for a clear interpretation of the statute involved. A comprehensive history of the general act regulating the practice of pharmacy, Act No. 134, Pub. Acts 1885, as distinguished from the "Grandfather Act" creating exemptions from the reach of the former statute, will be found in *Stebbins* v. *State Board of Pharmacy*, 297 Mich. 676, dissenting opinion of Mr. Justice McAllister, 297 Mich. 679-685. Since these opinions are so clear, we refrain from discussing the facts in this cause.

WHEREFORE, appellees respectfully submit this statement disclosing the foregoing matters and grounds making

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[6] *Western Union Telegraph Co.* v. *Texas*, 105 U. S. 298, 302. See, also, *Meyer* v. *Wells Fargo & Co.*, 223 U. S. 298; and *International Harvester Co.* v. *Wisconsin Dept. of Taxation*, 322 U. S. 435.

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against the jurisdiction of this Court, and in that connection, their motion to dismiss or affirm.

Respectfully submitted,

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